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Transcript of Proceedings

BEFORE THE

Federal Communications Commission

In the Matter of:

Docket NO. 91-10

BALDWIN, FLORIDA

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1 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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3 In the Matter of: : VOLUME II

4 BALDWIN, FLORIDA : Docket No. 91-10

5 - - - - - x

6 The above-entitled matter came on for pre-
7 hearing conference pursuant to Notice before
8 Edward Luton, Administrative Law Judge, at 2000 L
9 Street, Northwest, Hearing Room Four, Washington, D.C.,
10 Tuesday, August 20, 1991, at 10:00 a.m.

11 APPEARANCES:

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13 d/b/a White Broadcasting Partnership:

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1 I N D E X

2	WITNESS	DIRECT	CROSS
3	Charley White		26
4	Dianna White		114
5	Frederick Matthews	135	145

6 E X H I B I T S

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P R O C E E D I N G S

(Time Noted: 10:25 a.m.)

JUDGE LUTON: On the record.

Appearances please. State your name, who you are representing.

MR. WHITE: My name is Charley Cecil White, and I am representing White Broadcasting Partnership.

JUDGE LUTON: Thank you.

MR. BELENDIUK: Good morning, Your Honor. I'm Arthur Balendeuie, Smithwerk & Ballendeuie, on behalf of Douglas Johnson.

MR. WINSTON: James L. Winston and Desmond P. Brown on behalf of Northeast Florida Broadcasting.

MR. HALAGAO: Good morning, Your Honor. Avelino G. Halagao, representing JEM Production Limited Partnership.

MR. HONIG: David Honig, on behalf of Peaches Broadcasting Limited.

MS. LADON: Paula Ladon, for the Chief, Mass Media Bureau.

JUDGE LUTON: Thank you.

I've delayed the start of the hearing because I understood the parties were talking settlement possibilities. Have they reached any agreement in that regard that they wish to talk about?

1 MR. HONIG: No, Your Honor, we have been
2 unable to settle the case.

3 JUDGE LUTON: All right, we will proceed to
4 the taking of some evidence.

5 I see that there is a joint stipulation that
6 has been entered by the parties regarding the
7 comparative coverage issue. I'm going to accept that
8 stipulation. It is one which indicates that none of
9 the applicants seeks any comparative advantage because
10 of the area and population they would serve.

11 Ms. Ladon?

12 MS. LADON: Yes, Your Honor, I just wanted to
13 point out, I discussed this with Mr. Winston before we
14 convened. His signature is a facsimile and I was
15 wondering if he could, for the record, indicated that
16 he agreed to the stipulation.

17 Otherwise, we have no objection.

18 JUDGE LUTON: All right.

19 MR. WINSTON: I so stipulate, Your Honor.

20 JUDGE LUTON: All right, that's fine. Thank
21 you.

22 The stipulation is accepted, and the Bureau
23 is welcome to stay and participated if it feels it
24 wants to. Otherwise, it may be excused.

25 MS. LADON: I'd like to be excused, Your

1 Honor.

2 JUDGE LUTON: You may.

3 MS. LADON: Thank you.

4 JUDGE LUTON: Are there any preliminary
5 matters before we start?

6 MR. BELENDIUK: Your Honor, I've asked
7 counsel, and they have agreed, to let me go out of turn
8 for Doug Johnson. Mr. Johnson is not due to appear
9 today and he's not proposing any intervention. I'd
10 like to enter his exhibits at this time, if you have no
11 objection to that?

12 JUDGE LUTON: Anyone else want to go out of
13 turn?

14 Mr. Halagao called me some while ago
15 expressing some concern that JEM is going to be last.
16 I suggested to him that if he wanted to go out of turn
17 he should talk it over with the other parties.

18 How about that? Are you prepared to proceed
19 in docket order this morning or do you also wish to go
20 out of turn?

21 MR. HALAGAO: Well, we can proceed in the
22 order that is the docket, Your Honor.

23 JUDGE LUTON: Docket order, all right.

24 Well, then, instead of starting with White,
25 at the top of the list, we'll start with Mr. Johnson.

1 MR. BELENDIUK: Thank you, Your Honor.

2 Your Honor, I've handed the court reporter an
3 original and one copy of the document entitled Hearing
4 Exhibit of Douglas Johnson. It consists of one
5 exhibit, Exhibit 1, and is entitled Integration
6 Proposal. That Exhibit consists of one page and a
7 declaration.

8 If there are no objections, I'd like to have
9 that marked for identification as Johnson Exhibit No.
10 1.

11 JUDGE LUTON: So marked.

12 (The document referred to
13 above was marked Johnson
14 Exhibit No. 1 for
15 identification.)

16 MR. BELENDIUK: Your Honor, I'd like to move
17 Douglas Exhibit No. 1 into evidence.

18 JUDGE LUTON: 1 is offered. Is there an
19 objection?

20 (No response.)

21 JUDGE LUTON: The Exhibit is received as
22 Johnson's Exhibit 1.

23

24

25

1 (The document heretofore
2 marked Johnson Exhibit
3 No. 1 for identification
4 was received into
5 evidence.)

6 MR. BELENDIUK: Your Honor, if I may be
7 excused?

8 JUDGE LUTON: That completes Johnson entire
9 direct case?

10 MR. BELENDIUK: That's correct.

11 JUDGE LUTON: All right.

12 MR. BELENDIUK: I'm sorry, I didn't hear.
13 May I be excused, Your Honor?

14 JUDGE LUTON: You may be excused.

15 MR. BELENDIUK: Thank you very much.

16 JUDGE LUTON: I notice that the lady sitting
17 to the left of Mr. White rose to make an appearance but
18 she wasn't given an opportunity to do so. Would you
19 like to enter an appearance?

20 MS. WHITE: I was just going to state my
21 name.

22 My name is Dianna White, also representing
23 White Broadcasting.

24 JUDGE LUTON: Thank you very much.

25 Peaches is next.

1 MR. WINSTON: Your Honor, before Peaches
2 begins its case, we had faxed a copy of an exhibit, No.
3 4, to the parties yesterday. I wanted to distributed
4 those. I was going to wait until our turn before
5 making representations about the document, but I wanted
6 to at least distributed it to the parties so they could
7 have it in their possession prior to the time when we
8 will be testifying.

9 JUDGE LUTON: I'm sorry, Peaches isn't next.
10 White should be next. We're going to go to the top of
11 the list.

12 MR. WHITE: Your Honor, I've just handed the
13 original and one copy of the direct case exhibits in
14 White Broadcasting Partnership to the court reporter.
15 We have four exhibits and, if you wish, I can identify
16 all four at one time or one at a time, whichever you
17 prefer?

18 JUDGE LUTON: Your preference, not mine.

19 MR. WHITE: Okay, I'd like to go with one at
20 a time, please.

21 I'd like to identify for the record White
22 Broadcasting Partnership Exhibit 1. This is an 18-page
23 exhibit entitled The Applicant and it includes a
24 written attestation. I ask that this exhibit be
25 identified as White Exhibit 1.

1 JUDGE LUTON: Marked as 1.

2 (The document referred to
3 above was marked as White
4 Exhibit No. 1 for
5 identification.)

6 MR. WHITE: I ask that this Exhibit, please,
7 be admitted into evidence?

8 JUDGE LUTON: Any objection to 1?
9 (No response.)

10 JUDGE LUTON: 1 is received.

11 (The document heretofore
12 marked White Exhibit No. 1 for
13 identification was received
14 into evidence.)

15 JUDGE LUTON: You may proceed.

16 MR. WHITE: Your Honor, I would also like to
17 identify for the record White Broadcasting Exhibit 2.
18 This is a two-page exhibit entitled Diversification and
19 it includes a written attestation.

20 I ask that this Exhibit be identified as
21 White Exhibit No. 2.

22 JUDGE LUTON: 2 for identification.

23 (The document referred to
24 above was marked White Exhibit
25 No. 2 for identification.)

1 MR. WHITE: I ask that this Exhibit be
2 admitted into evidence.

3 JUDGE LUTON: Any objection to the offer?
4 (No response.)

5 JUDGE LUTON: 2, Diversification, is
6 received.

7 (The document heretofore
8 marked White Exhibit No. 2 for
9 identification was received
10 into evidence.)

11 MR. WHITE: Your Honor, I'd also like to
12 identify for the record White Broadcasting Partnership
13 Exhibit No. 3. This is a six-page exhibit entitled
14 Integration and it includes a written attestation.

15 I ask that this exhibit be identification as
16 White Exhibit 3.

17 JUDGE LUTON: So marked.

18 (The document referred to
19 above was marked as White
20 Exhibit No. 3 for
21 identification.)

22 MR. WHITE: I ask that this exhibit, please,
23 be admitted into evidence?

24 JUDGE LUTON: Any objection to 3?

25 MR. HONIG: Yes, Your Honor, several

1 objections.

2 Beginning on page 2, on the face of this
3 exhibit, under civic activities, the reference to Baker
4 County Chamber of Commerce states that Mr. White was
5 the representative for his radio station.

6 Inasmuch as that is attendant to his
7 employment, I would ask that that item be stricken.

8 MR. WHITE: Objection, Your Honor.

9 I think we can prove that part of that was
10 personal and we've so attested to.

11 JUDGE LUTON: Permission to strike, is
12 denied.

13 Other objections?

14 MR. HONIG: Your Honor, on page -- pages 4
15 and 5, the two items for civic activities for Mrs.
16 White, service on job evaluation committee at Ranger
17 Transportation and serves on the owner-operator
18 committee at Ranger Transportation.

19 Mrs. White is employed at Ranger
20 Transportation. Those are internal committees and Mrs.
21 White testified in her deposition that those were not
22 civic related and ought not to have been listed in her
23 integration statement.

24 I would ask that they be stricken.

25 MR. WHITE: No objection, Your Honor.

1 JUDGE LUTON: This is at the bottom of page
2 4?

3 MR. HONIG: And the top of page 5 of the
4 Exhibit.

5 JUDGE LUTON: It's agreed that those two
6 items will not represent civic activities and they are
7 stricken.

8 Other objections.

9 MR. HONIG: Yes.

10 Your Honor, on page 5, paragraph 9, this is
11 not a proper claim for broadcast experience. It is not
12 employment at a radio station. It is voice-over work
13 which apparently was informal, was not compensated and
14 no particular radio stations or periods of time were
15 identified as is required by the new rules. So, I
16 would ask that that entire paragraph be stricken.

17 MR. WHITE: Objection, Your Honor.

18 We think that there have been many
19 broadcasters throughout the years that have started at
20 stations doing some spots, doing on-air work that and
21 not getting paid for it that have led to great careers
22 in broadcasting.

23 We realize that this isn't much experience
24 and we would like for you to rule on it, please.

25 JUDGE LUTON: Well, the fact that the

1 experience may have been uncompensated really is quite
2 a flat point.

3 No radio station is identified or any other
4 kind of station, but the experience is claimed,
5 nevertheless. And, being that I heard something to the
6 argument that the new rules require that -- require
7 some more specificity than we see here, you're talking
8 about the integration statements that are required by
9 the new rules and what they require to be spelled out,
10 that sort of thing.

11 It may be that -- I'm not certain that those
12 new rules set new evidentiary standards in this respect
13 so I would be unwilling, at this point, to bar this
14 kind of generalized claim because it doesn't spell out
15 with all the detail this qualitative claim for
16 experience that the integration statements are now
17 required to include.

18 However, I can say that, in my view, this
19 generalized statement is not likely to gain a great
20 deal of attention from me in preparing an initial
21 decision because -- because it's nature is so general,
22 it simply doesn't tell me very much. It seeks to tell
23 me something. I need to think about it before I was
24 able to conclude that it tells me anything at all.

25 Having said all of that, however, my

1 conclusion is that for evidentiary purposes, this
2 statement is not so outrageous or egregious or so wide-
3 of-the-mark until it ought to be stricken. I'm going
4 to deny the motion to strike.

5 MR. WHITE: Thank you, Your Honor.

6 JUDGE LUTON: Other objections?

7 MR. HONIG: Your Honor, paragraph 10, on page
8 5, contains three sentences relating to Mrs. White's
9 claim for other management experience.

10 Even assuming that management experience
11 attendant to -- which is transferrable to broadcast
12 employment may occasionally have some value, the first
13 two sentences describe work experience for which no
14 claim of transferability for broadcasting has been made
15 and, therefore, those two sentences should be stricken.

16 MR. WHITE: I would object, Your Honor.

17 The second sentence goes directly towards
18 responsibility for arranging permits and licenses. It
19 goes on to say that these licenses are required from
20 the ICC, DOT, EPA and state licensing agencies
21 throughout the United States and the government
22 agencies in Canada, including permitting for hazardous
23 material, radioactive material, low specific
24 radioactive waste, and explosives. That's the second
25 sentence which counsel wishes to strike and it goes

1 directly to work related issues.

2 I don't think we can get any more complex
3 than licensing from ICC, DOT, EPA and the other
4 agencies. This is a very complex matter and it shows
5 that she has experience that very well could be related
6 to broadcasting.

7 JUDGE LUTON: I don't think it works that
8 way, Mr. White. General management experience doesn't
9 count for anything in these broadcast licensing cases.

10 What I am going to do is leave that material
11 as it is with it clearly understood that it's intended
12 to state in fact that it is received as stating only
13 biographical material. It plays no part in deciding
14 who gets the license in this case.

15 The motion to strike it is denied. However,
16 the material will be viewed strictly as biographical in
17 nature.

18 Other objections?

19 MR. HONIG: No, Your Honor.

20 JUDGE LUTON: Any other objections?

21 MR. HONIG: Yes, Your Honor.

22 At page 2, in the middle of the page, Mr.
23 White claims civic involvement credit for two
24 activities which began in 1990, after the application
25 was filed. I would move to strike both of those.

1 JUDGE LUTON: The recency of the activity is
2 not a basis on which a claim for civic activity ought
3 to be stricken. The Review Board has instructed that
4 those matters can be received, however for reduced
5 credit.

6 The motion to strike is denied.

7 MR. HONIG: Your Honor, I would make the same
8 motion as to page 4, two activities listed for Mrs.
9 White.

10 JUDGE LUTON: Same ruling.

11 MR. HONIG: Thank you, Your Honor.

12 JUDGE LUTON: Other objections?

13 (No response.)

14 JUDGE LUTON: 3 is received.

15 (The document heretofore
16 marked White Exhibit No. 3 for
17 identification was received
18 into evidence.)

19 MR. WHITE: I ask that this exhibit be
20 admitted into evidence, Your Honor.

21 JUDGE LUTON: It had already been offered and
22 I just received it. It's received in evidence.

23 MR. WHITE: Your Honor, I would like to
24 identify for the record White Broadcasting Exhibit No.
25 4, our final exhibit. This is a two-page exhibit

1 entitled Auxiliary Power and it includes a written
2 attestation.

3 I ask that this exhibit be identified as
4 White Exhibit 4, please.

5 JUDGE LUTON: 4, Auxiliary Power.

6 (The document referred to
7 above was marked White Exhibit
8 No. 4 for identification.)

9 JUDGE LUTON: You may move it.

10 MR. WHITE: I ask that this exhibit be moved
11 into evidence, please.

12 JUDGE LUTON: Objections to Auxiliary Power?
13 (No response.)

14 JUDGE LUTON: It's received.

15 (The document heretofore
16 marked White Exhibit No. 4 for
17 identification was received
18 into evidence.)

19 JUDGE LUTON: That's completes White's direct
20 case?

21 MR. WHITE: Your Honor, we are ready to be
22 cross examined at any time.

23 JUDGE LUTON: All right. It will be
24 necessary for you to take the stand, please, so I can -
25 - I don't know, how does this work? I haven't had a

1 pro se applicant in quite a while.

2 Since you are going to give testimony, it is
3 necessary that you be sworn and I think the place to do
4 that is at the witness stand and have you testify as
5 any other ordinary witness would.

6 MR. WHITE: Would you like for me to go
7 first, Your Honor?

8 JUDGE LUTON: I am reluctant to suggest to
9 you how you ought to proceed. It is your case and you
10 are free to put it on the way that you choose.

11 Would you raise your right hand, please.
12 Whereupon,

13 CHARLEY CECIL WHITE
14 was called as a witness, and having been first duly
15 sworn, was examined and testified as follows:

16 JUDGE LUTON: Please be seated.

17 If there are objections made to -- well, is
18 your wife going to handle you, as we say, while you are
19 on the stand?

20 MR. WHITE: No, she is not, Your Honor.

21 And, we have no objection to her leaving the
22 room and entering the witness box.

23 JUDGE LUTON: That's beside the point.

24 Well, let's see how we do. Let's just
25 proceed with cross examination of Mr. White, beginning

1 with Peaches.

2 MR. HONIG: Your Honor, we would like to
3 request sequestration. We are -- we had sequestration
4 during the depositions. We are willing to accept
5 sequestration.

6 JUDGE LUTON: All right, that's fair.

7 I would ask that Mrs. White excuse herself
8 while her husband is testifying.

9 MR. HONIG: Your Honor, before we begin, may
10 we request an instruction going to the knowledge and
11 compliance with Commission rules and procedures albeit
12 the applicant is appearing pro se?

13 JUDGE LUTON: What kind of instruction would
14 you like?

15 MR. HONIG: Specifically we are requesting an
16 instruction to the effect that although the witness is
17 appearing pro se it is still expected to be familiar
18 with and will be bound by Commission rules and
19 procedures and will receive no special procedural
20 consideration owing to its election for pro se status.

21 JUDGE LUTON: I think you've said it very
22 well. There is nothing that I could add to that.

23 CROSS EXAMINATION

24 BY MR. HONIG:

25 Q Mr. White, would -- good morning.

1 A Good morning.

2 Q Would you state your full name please.

3 A Charley Cecil White. Charley is spelled L-E-
4 Y. 707 Newport Street, MacClenny, Florida 32063.

5 Q Now, Mr. White, since it is on our minds and
6 we've been on the subject, first, let me point out that
7 Friday we received a notice from your former counsel,
8 Ms. Moline, that she had withdrawn. Now, does she
9 continue to provide any representation to the applicant
10 in this case?

11 A No, not at this time.

12 Q When you say not at this time, are there any
13 plans for you to have her resume representation in
14 whole or in part?

15 A There could be in the future, yes, sir.

16 Q Would you describe how it came to pass that
17 she has withdrawn?

18 JUDGE LUTON: Mr. Honig, is that any of our
19 business really?

20 MR. HONIG: Let me approach it another way,
21 Your Honor.

22 BY MR. HONIG:

23 Q Was it your decision to terminate her?

24 A We came to a mutual decision.

25 Q And, did you initiate the request or did your

1 wife initiate the request?

2 JUDGE LUTON: Mr. Honig, I'm ill at ease over
3 this line of questioning. I really don't understand.
4 Perhaps you would be willing to share with me just what
5 it is you are seeking to establish by this particular
6 line of questioning?

7 MR. HONIG: Well, there were two reasons, one
8 of which I am satisfied. I simply wanted to be sure
9 there wasn't any continuing future representation.

10 The other reason is that the applicant has
11 made claims going to the future course of conduct in
12 terms of control. There are two principals here and I
13 am trying to determine whether one or both of them has
14 maintained control and who is responsible for making
15 decision in the application. It is a major decision.

16 JUDGE LUTON: Yes, they are major decision,
17 but those decisions ought to deal with things more
18 directly relevant to the direct testimony. I am not
19 going to under the guise of seeking control permit an
20 exploration of the reasons why the client's former
21 lawyer was discharged.

22 I'm going to ask you to change your line and
23 pursue your point in different ways.

24 MR. HONIG: Let me try this more limited
25 approach, Your Honor.

1 BY MR. HONIG:

2 Q In the discussions with Mrs. Moline which led
3 to her withdrawn were those discussions conducted by
4 you or Mrs. White?

5 A Both of us, on extension phones.

6 Q Okay.

7 MR. HONIG: I have no further questions on
8 this line, Your Honor.

9 BY MR. HONIG:

10 Q Mr. White, you don't have your application
11 before you so this may be a little awkward. But, do
12 you recall in your application a representation to the
13 effect that by the B cut off date you would respond to
14 Section 4B, Integration Statement?

15 A Yes, sir.

16 Q And, specifically, it states there on page 7
17 of Form 301 that the information therein "to be filed
18 on or before the B cut off date."

19 A Yes, sir.

20 Q Now, was a copy of that amendment ever placed
21 in the applicant's public file?

22 A Yes, it was.

23 Q Do you know whether it is there now?

24 A The last time I checked, I believe it was
25 there.

1 JUDGE LUTON: Could I see a copy of the --

2 MR. HONIG: Yes, Your Honor.

3 And I would have to state, as a general
4 matter, that we have been working much of the night and
5 this morning trying to settle the case and one of the
6 things that fell through the cracks was making copies
7 of certain documents. It may be necessary for me to
8 reserve until we get a break and make copies.

9 BY MR. HONIG:

10 Q But, this is a copy of an April 20, 1990
11 amendment filed by Ms. Moline containing, among other
12 things, that integration statement and I would ask that
13 you -- whether this refreshes your memory. Do you
14 recognize it?

15 A I believe, to the best of my recollection,
16 that it was placed in the file.

17 Q Okay. Now, Mr. White, the statement contains
18 the following representation -- I'll show it to you --
19 minority preference: Mr. White will claim a
20 comparative preference as a member of a minority group.
21 Mr. White is part Native American Indian.

22 A Yes.

23 MR. HONIG: By the way, I should specify for
24 the record, this copy was obtained from the
25 Commission's files.